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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,673	10/11/2000	Hisashi Mitamura	198337US3	3794

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EXAMINER

MACKEY, JAMES P

ART UNIT PAPER NUMBER

1722

DATE MAILED: 10/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/684,673

Applicant(s)

MITAMURA, HISASHI

Examiner

James Mackey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

1. The disclosure is objected to because of the following informalities: on page 17, line 14, "tier" should be --tire--.

Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, "this placing part" is unclear as to which of the plural placing parts is intended (the use of --the placing part of the opening and closing station-- is suggested); and lines 10-11, "an optional stage of the housing shelf" is unclear and indefinite as to exactly what is intended (does this mean a "selective" one of the stages of the housing shelf?).

In claim 2, line 8, "the placing part" is unclear as to which of the plural placing parts is intended (the use of --the placing part of the opening and closing station-- is suggested); line 12, "the following step" lacks proper antecedent basis in the claim; and line 14, "an optional stage of the housing shelf" is unclear and indefinite as to exactly what is intended (does this mean a "selective" one of the stages of the housing shelf?).

In claim 3, line 5, "this placing part" is unclear as to which of the plural placing parts is intended (the use of --the placing part of the auxiliary station-- is suggested).

In claims 4 and 6, "the carrying-out line", "the following step" and "the carrying-in line" each lacks proper antecedent basis in the claims.

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In claims 8, line 5, and claim 9, lines 6-7, "an optional placing part direction" is unclear and indefinite as to exactly what is intended by an optional direction.

Further in claim 8, lines 7-8, "the placing part" is unclear as to which of the plural placing parts is intended (the use of --the placing part of the rising and falling transfer device-- is suggested).

In claim 13, lines 2-3, "having the above-described circular arrangement" is indefinite (especially considering that the previous claims do not recite plural circular station groups), and the claim should recite the structure of the circular station groups; and line 5, "between the both" is indefinite (especially considering that there may be "two **or more**" circular station groups).

In claim 14, line 5, "direction of an optional circularly arranged placing part" is unclear and indefinite as to exactly what is intended (does this mean a "selective" one of the placing parts?).

In claim 15, line 8, "this placing part" is unclear as to which of the plural placing parts is intended (the use of --the placing part of the opening and closing station-- is suggested); line 12, "the following step" lacks proper antecedent basis in the claim; and line 14, "an optional stage" is unclear and indefinite as to exactly what is intended (does this mean a "selective" one of the placing parts of the housing shelf?).

In claim 16, line 8, "the mold base" is unclear as to which of the plural mold bases is intended; line 12, "the following step" lacks proper antecedent basis in the claim; and line 16, "the rotating action" lacks proper antecedent basis, since no rotation of any structure has been recited.

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and

useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,196,819. This is a double patenting rejection.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,196,819 in view of Irie (U.S. Patent 5,820,885). Claim 1 of U.S. Patent 6,196,819 recites the tire vulcanizing equipment substantially as claimed in instant claims 1-15, except for the housing shelf of the vulcanizing station having plural vertical stages of the placing parts for placing the tire mold assemblies, and except for the transfer station being vertically movable along the housing shelf to selectively retrieve tire mold assemblies from one of the vertically arranged placing parts of the housing shelf; however, such is disclosed in Irie '885, and it would have been obvious to one of ordinary

skill in the art at the time of the invention to modify the tire vulcanizing equipment as claimed in claim 1 of U.S. Patent 6,196,819 by providing such a housing shelf and transfer station as disclosed in Irie '885 in order to increase productivity while minimizing factory floor space.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 16 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Japanese Patent Document 11-245231.

10. Claims 1-6 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Irie (U.S. Patent 5,820,885; Figures 12-13; col. 12, lines 37-59).

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Document 11-245231 in view of Irie (U.S. Patent 5,820,885; Figures 12-13; col. 12, lines 37-59).

Japan '231 discloses a tire vulcanizing equipment comprising a vulcanizing station having a housing shelf with plural stages of placing parts for placing tire mold assemblies, including piping for supplying and discharging heating medium to the mold assemblies; an

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opening and closing station having a placing part for placing a tire mold assembly, an opening/closing device for opening and closing the tire mold assembly placed on the placing part of the opening and closing station, a green tire loader for loading green tires from a supply line to the tire mold assembly and a vulcanized tire unloader for unloading vulcanized tires from the tire mold assembly to a removal line; an auxiliary opening and closing station; and a transfer station for transferring the tire mold assembly between a selective one of the placing parts of the housing shelf and the placing part of the opening and closing station, except for the transfer station being vertically movable along the housing shelf for receiving tire mold assemblies from plural vertical stages of placing parts of the housing shelf. Irie '885 discloses a tire vulcanizing equipment including a vulcanizing station having a housing shelf with plural vertical stages of placing parts for placing tire mold assemblies, including piping for supplying and discharging heating medium to the mold assemblies; an opening and closing station having a placing part for placing a tire mold assembly, an opening/closing device, a tire loader and a tire unloader; an auxiliary opening and closing station; and a transfer station for transferring the tire mold assembly between a selective one of the vertical stages of placing parts of the housing shelf and the placing part of the opening and closing station, wherein the transfer station is vertically movable along the housing shelf. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Japan '231 by providing the housing shelf with plural vertical stages of placing parts, with the transfer station including means for vertically moving the transfer station along the housing shelf to selectively retrieve tire mold assemblies from one of the vertically arranged placing parts of the housing shelf, as disclosed in Irie '855, thereby increasing productivity while minimizing factory floor space.

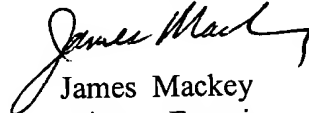
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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mackey whose telephone number is 703-308-1195. The examiner can normally be reached on M-F, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Silbaugh can be reached on 703-308-3829. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
James Mackey  
Primary Examiner  
Art Unit 1722  
9/30/02

jpm  
September 30, 2002